



DEPT. OF COMMUNITY DEVELOPMENT  
PLANNING DIVISION  
301 W. CHESTNUT  
PHONE: (479) 621-1186  
FAX: (479) 986-6896

**BOARD OF ADJUSTMENT  
MINUTES  
June 28, 2018**

**MEMBERS PRESENT:**

Hannah Cicioni  
Andrew Curry  
Mandel Samuels  
Eriks Zvers

**OTHERS ATTENDING:**

Lori Ericson – Planning Services Administrator  
Beth Treat – District Planner  
Ethan Hunter – Planner III  
Kara King – Planning Technician  
Jennifer Waymack – Senior Staff Attorney  
Jeanine Johnson – Administrative Assistant

**Chairman Andrew Curry called the meeting to order at 4:00 pm.**

**OLD BUSINESS**

**18-29:** A request by Aaron and Marnie Jackson for a variance to allow a rear setback and utility easement reduction from 20' to 10' at 4514 West Mourning Dove Drive in the city's RSF-5 (Residential Single Family, 5 units per acre) zoning district.

Staff reported the applicant requests to reduce the rear yard setback and utility and drainage easement setback from 20 feet to 10 feet for the construction of a pool. Due to the location of the home, this leaves only 12 feet to be able to build a pool and decking around the pool without encroaching upon the variance.

Aaron and Marnie Jackson, homeowners, represented the project. Jackson stated there would be no relocation of utilities. He stated the covered porch is existing but the patio will be removed.

Curry opened the Public Hearing. As no speakers were in favor or opposition of the variance, the Public Hearing was closed. There were no comments or questions from the Board.

Cicioni motioned to approve the variance request for a rear setback and utility and drainage easement reduction from 20 feet to 10 feet as presented. Samuels seconded. Voice vote: (unanimous). Motion carried. **APPROVED.**

- 18-31:** A request by Nathan Hicks for a variance to allow a rear setback reduction from 20' to 12.5' and an east side setback reduction from 7.5' to 6.5' at 1504 West Stratton Road in the city's RSF-4 (Residential Single Family, 4 units per acre) zoning district.

Staff stated the applicant requests a rear setback reduction from 20' to 12.5' to accommodate a pool. The east side setback reduction from 7.5' to 6.5' is partially for the construction of the pool. During the review of the variance request, staff found the east side of the existing house is located 1' in the setback. This setback reduction would bring the home into compliance. Staff clarified how the non-conforming house and pool variances are related. Staff stated the pool and home are in the side setback. Even though, a building permit was obtained in 2008, the home was constructed in the setback. The east side yard setback reduction and the rear yard setback reduction will both need to be approved to allow the pool to be built.

Curry opened the Public Hearing. As no speakers were in favor or opposition of the variance, the Public Hearing was closed. There were no comments or questions from the Board.

Cicioni motioned to approve the variance request for a rear yard setback reduction from 20 feet to 12.5 feet as presented. Samuels seconded. Voice vote: (unanimous). Motion carried. **APPROVED.**

Zvers motioned to approve the variance request for an east side yard setback reduction from 7.5 feet to 6.8 feet as presented. Samuels seconded. Voice vote: (unanimous). Motion carried. **APPROVED.**

### **NEW BUSINESS**

- 18-25:** A rehearing request by Ulises Correa for a variance to allow a rear setback and utility easement reduction from 20' to 13' at 1710 West Gilligan Avenue in the city's R-SF (Residential Single-Family) zoning district.

Staff stated the applicant came before the Board on May 24, 2018 for a setback and utility easement from 20' to 8', which was denied. Staff said Correa is coming before the Board for a rehearing on the previous request based on new information, which was not available at the time. Staff said Correa has been able to acquire letters from the adjacent property owners stating they are in support of the variance request. Staff stated Correa has modified the request for setback and utility easement reduction request to 13' instead of 8', to encroach less. Staff mentioned Correa believes his site-specific hardship arguments were not adequately presented.

Ulises Correa, homeowner, represented the project. Curry clarified this is determine if the request should be reheard not necessarily the merits of your request. Curry asked Correa to provide new information which was not available at the time of the public hearing on May 24, 2018 or an explanation of the Board's mistake on the previous request.

Correa said the Board did not make a mistake but he did not adequately understand the process. He was unable to attend the previous meeting due to airline delays. Once the request was denied, he spoke to Staff and got a better understanding of the process to better describe the hardships. Correa said new information includes:

- A new request for reduction from the previous application to only 13'.
- The structure is simpler in design.
- A hardship includes family members with pre-existing serious health concerns, skin cancer. The members cannot be exposed to the sun.
- The house faces north and south, which puts the sun directly on their backyard at all periods of the day.
- The utilities come from the front of the street (water and gas). Electrical is located in the back of the house.

He said these were not made clear upon presentation of the first request. Correa stated he had three letters of support from neighbors.

Curry opened the Public Hearing. As no speakers were in favor or opposition of the variance, the Public Hearing was closed.

Curry asked Staff if the request for reduction from 8' setback to 13' setback is a rehearing of a previous denied request or is it considered a different request. Staff mentioned it was a rehearing. Staff mentioned if they were asking for more of a reduction, it would be considered a new request. Curry disagreed with Staff regarding if this was a rehearing or a new request. He asked Waymack for her interpretation. Waymack stated it sounds as if it is the same request with only a reduction in the amount of the variance of 5'. Waymack said if a rehearing is approved, then the request will be to approve as modified or amended.

The Board discussed whether the information was available and not presented or if this is new information since the last meeting. Kai Weiner, the contractor, represented Correa at the first hearing. Correa and Weiner both agreed the information presented today was not provided to Weiner at the first hearing. Curry stated there are four members of the Board of Adjustments present out of seven current Board members. He stated you will need four "yes" votes to reopen the hearing. Curry asked Correa if he would like to table this hearing for full Board consideration or vote today. Correa agreed to proceed with a vote.

Cicioni moved to deny the request to rehear Variance request 18-25 for Ulises Correa. Zvers seconded. Voice vote: (unanimous). Motion carried. **DENIED.**

**18-32:** A request by Aimee Davis Clevenger for a variance to allow a rear setback and utility easement reduction from 20' to 10' at 5630 Brighton Road in the city's RSF-5 (Residential Single Family, 5 units per acre) zoning district.

Staff stated the applicant requests to reduce the rear yard setback and utility easement setback from 20 feet to 10 feet for the construction of a pool. The lot is surrounded by a road on three sides, which means a much smaller buildable area than most locations. A variance to reduce the setback and utility easement is required before a building permit can be issued. The pool is placed very close to the edge of the porch and the applicant would only have five feet to build their pool in if they stayed out of the setbacks.

Aimee Davis and Brett Clevenger, homeowners, represented the project. Clevenger stated the east and south side have a 20' easement and they are requesting a reduction to 10' for the pool. The pool will butt up against the patio. Clevenger has the support of their next door neighbor. There are no utilities to be relocated. The pool will be 7' or 8' from the closest line. The pool size has changed to 14 x 30.

Curry opened the Public Hearing. As no speakers were in favor or opposition of the variance, the Public Hearing was closed. There were no comments or questions from the Board.

Samuels motioned to approve the variance request for a rear setback and utility easement reduction from 20 feet to 10 feet as presented. Cicioni seconded. Voice vote: (unanimous). Motion carried. **APPROVED.**

Clevenger asked if the east and south side setback reduction from 20' to 10' were also approved. Staff stated the legal notice was only for the rear setback and utility easement reduction. Waymack stated the legal notice is binding. Staff will run another legal notice for the east and south side setback reduction from 20' to 10' and place it on the agenda for Board of Adjustment meeting on July 12, 2018.

Waymack later stated she had reviewed the code. The notice provision and the nature of the variance request is what has to be posted. Therefore, the notice is sufficient to cover the nature of the variance request. Even though it did not list the variance correctly, it did state it was for a setback reduction. Waymack stated she had no objection.

Cicioni made a motion to approve the setback reduction of 10' on the east side of the property. Zvers seconded. Voice vote: (unanimous). Motion carried. **APPROVED.**

**18-33:** A request by Seeburg Service Center for a variance to allow a 7'4" tall monument with 95.33 square feet of total sign area at 2880 West Walnut Street in the city's C-2 (Highway Commercial) zoning district and the City's Overlay District.

Staff stated the applicant requests additional signage to better advertise the services they provide. The site has very thin street frontage. The width of the building along the street frontage is approximately 32 feet. The wall signage is limited to 62 feet. Therefore, wall

signage will not be an effective way to meet their needs. Additional wall signs would likely be obscured by existing structures. There is a slight change in grade from Walnut to the parking lot and entrance. The request is to go from a 6' monument sign at 7'4" in height. The square footage they would be allowed is 75' and they are requesting 95.33 square feet with the addition.

Dean Cantrell, Seeburg Service, represented the request. Cantrell states the signage and full service signs are located on the west side. A two-story building has since been constructed, which obscures the view of the monument sign. The added signage will be at the top of the monument and the base will remain the same.

Curry opened the Public Hearing. As no speakers were in favor or opposition of the variance, the Public Hearing was closed.

Cicioni asked for clarification on the hardship. Cantrell stated one sign states "Seeburg Service Center" and the west side signage states "Full Service Auto Repair". However, due to the construction of the large building, the public is unable to see the signage on the west side. The addition of 16" on top of the existing monument sign would state "Total Car Care and Repair". The additional signage would give a better explanation of services provided at the location.

Samuels motioned to approve the request for a monument at 7'4" in height and 95.33 square feet in total sign area. Zvers seconded. Voice vote: (unanimous). Motion carried. **APPROVED.**

**18-34:** A request by Speedy Splash for a variance to allow a minimum parking reduction from 21 to 14 at 300 West Hudson in the city's C-2 (Highway Commercial) zoning district.

Staff stated the applicant requests reduction of the minimum required parking spaces from 21 to 14 spaces. The applicant is going through the large-scale development process. While there are vacuums at every customer parking stall, many of the customers will just drive through the car wash without ever needing to park. Additionally, the applicant expects there to be only 4 to 10 employees on-site at any given time.

Jeff Ramming, McLain Group and Jason Appel, ESI, represented the variance. Ramming stated this is an express tunnel wash in which the employees walk the vehicle thru the wash. He stated many of the customers will just drive through the car wash without ever needing to park. He stated this model footprint of parking has been successful in Springdale, Fayetteville and Lowell.

Curry opened the Public Hearing. As no speakers were in favor or opposition of the variance, the Public Hearing was closed.

The Board questioned if 14 parking spaces would be adequate if all 10 employees arrived to work. Ramming stated that usually does not occur unless it is a holiday. He said usually the number of employees is lower and they can utilize an unoccupied vacuum

stall for employee parking. This service is for fast service and will have 14 vacuum stalls. Ramming said they have a large stacking lane for drive through traffic, approximately 150' of stacking room. Staff stated a Conditional Use Permit was granted and with the reduction in parking spaces they would still meet the off parking requirements.

Samuels motioned to approve the variance request for a minimum parking spaces reduction from 21 to 14 spaces as presented. Cicioni seconded. Voice vote: (unanimous). Motion carried. **APPROVED.**

**18-35:** A request by Russell Brockman for a variance to allow a front setback reduction from 20' to 9.63' at 2017 West Sycamore Street in the city's R-DP (Residential Duplex Patio Home) zoning district.

Staff stated the applicant found their proposed carport would be located in the front yard setback. The applicant requests to reduce the front yard setback from 25 feet to 9.63 feet for a building permit. The applicant would like to enclose the current carport location as an addition onto their house. They would then like to put a carport in front of the new addition.

Russell Brockman, represented the variance. He stated the current carport would become enclosed and would like a carport located in front of new enclosure. He stated it would be esthetically pleasing. Brockman stated there would be no utilities issues or curb cuts. The structure would be facing south towards Sycamore Street. Brockman stated he would prefer the structures in the existing location partially for feasibility reasons. There have been no comments from the neighbors.

Curry opened the Public Hearing. As no speakers were in favor or opposition of the variance, the Public Hearing was closed.

Cicioni had concerns regarding the line of sight, as the property sits on a corner, especially if other cars were parked beyond the carport. Brockman stated there are no obstructions to the sight of traffic. Brockman stated there is an old driveway on the side with less room, the same setbacks and no utilities on the west or back of the property. He stated there are utilities on the east side of the property.

Curry explained to Brockman there are seven members on the Board of Adjustments. You will need four "yes" votes in order to pass the variance. Curry gave Brockman the option to table the variance for a full vote of the Board or to continue with a vote. Waymack addressed Brockman and the Board. She stated if the variance were to be denied, Brockman could communicate with Staff on further recommendations going forward. Brockman decided on the vote.

Cicioni motioned to deny the variance request for a front yard setback reduction from 25 feet to 9.63 feet as presented. Zvers seconded. Voice vote: (unanimous). Motion carried. **DENIED.**

**18-36:** A request by Cabela's & Bass Pro Shops for a variance to allow 2125 square feet of total sign area at 2300 South Promenade Boulevard in the city's C-2 (Highway Commercial) zoning district, the City's Overlay District, and the City's Interstate Sign District.

Staff stated this request has been withdrawn. The request will be on the agenda for July 12, 2018.

**18-37:** A request by Bank of the Ozarks for a variance to allow a 50' interstate pylon and a 60 square foot monument at 800 North 47th Street in the city's R-O (Residential Office) zoning district, the City's Overlay District, and the City's Interstate Sign District.

Staff stated the first request is regarding the east side of the property with a non-conforming existing pylon sign. It is zoned as RO and in the Overlay District. There are plans for a conforming monument sign but requesting an additional square footage. In the RO District, it is 48 square feet per monument sign and they are requesting 60 square feet. They are within the height limit. It is just additional sign area on the monument sign.

The second request is for an interstate pylon. This is located within the Interstate Sign District, which allows a pylon sign up to 70' in height and 200 square feet in total sign area. Within the Interstate Sign District, it is restricted to C-2, Highway Commercial, C-4, Open Display, and Commercial Properties.

The third request is for LED changeable copy signs on the monument and pylon signs. The LED is not the full range of color or animation. This would be within the 50% of the total sign or less. It does fit within those standards. The signs are of great distance from the residential area to the east. The south side of the location is surrounded by commercial development.

Joe Conway, Arkansas Sign and Banner, represented the variance. He stated the pylon sign is essentially opaque in nature. There will be minimal light pollution from the sign. The sign is approximately 50 feet from I49. The sign will be angled towards I49. Therefore, the face of the EMC will be perpendicular to the neighborhood, which is approximately 350'. There are mature trees in the neighborhood.

The monument sign is within the 6-foot height limitation. We made the sign wider because if you are eastbound on Olive from the overpass, it's very recessed and difficult to see the sign. The face is perpendicular Olive. It will be 6' tall and the EMC is under 50%. It is approximately 250 feet from the residential area. It will not be visible to the residential area. Conway stated the EMC will only change when code allows.

The non-conforming pylon sign will be removed and replaced with a monument and pylon sign along I49. Bank of the Ozarks has approximately 200 feet of I49 frontage. Being sensitive to the neighbors, it should only be visible on I49. The monument sign should have no visibility for the neighbors as well.

Curry opened the Public Hearing. As no speakers were in favor or opposition of the variance, the Public Hearing was closed.

Curry had concerns regarding the sign being close to a neighborhood. Staff stated there are several R-O properties in a similar situation and were treated essentially as commercial. The offices behind the location and the vicinity of 47th Street are more traditionally in R-O property. The distance of the two street entrances, the neighborhood and approximately the interstate, makes this a unique situation.

Cicioni motioned to approve the request for 12 square feet of additional sign area on a monument sign. Zvers seconded. Voice vote: (unanimous). Motion carried.

**APPROVED.**

Cicioni motioned to approve the request for a 50-foot interstate pylon with 185 square feet of total sign area. Zvers seconded. Voice vote: (unanimous). Motion carried.

**APPROVED.**

Cicioni motioned to approve the request to allow LED changeable copy signs in the R-O zoning district. Samuels seconded. Voice vote: (unanimous). Motion carried.

**APPROVED.**

**18-38:** A request by Andy's Frozen Custard for a variance to allow 1 additional canopy sign and 3 additional wall signs at 4200 South JB Hunt Drive in the city's C-2 (Highway Commercial) zoning district.

Staff stated the applicant requests a sign variance. The location has two street frontages and 2 square feet per street frontage, they would be allowed 241.5 square feet of total sign area by right. The total square footage of all wall signs as request is 189.8 square feet. This is not for any additional sign area, just the number of wall signs. The wall signs in the C-2 zoning district are limited to 2 square feet of total sign area per 1 linear foot of frontage. They are requesting 1 additional canopy sign on the front North elevation. Per code, you are allowed one canopy per face. However, they are requesting two canopies on the north elevation over the drive thru. Technically this is classified as a canopy sign. One is approved by right.

On the east side elevation, you are allowed one by right and it is one of the Andy signs. One of the additional signs would require a variance. There is an ice cream cone on the elevation and it is considered art and not part of the request.

The west elevation does not have any street frontage, so by right they not allowed any signage. They are requesting 2 additional wall signs.

Sara Bowles represented Andy's Frozen Custard. She stated the reason for the extra canopy is the drive-thru wraps pretty much around the entire building. There is another Andy's in Rogers, however, it is completely different from this building. The new design



will assist customers to the drive-thru entrance and the one-way direction. The PUD will not allow free standing signs, which is why we are asking for additional signage.

Curry opened the Public Hearing. As no speakers were in favor or opposition of the variance, the Public Hearing was closed.

The Board had a brief discussion on the approval of the wayfinding signs.

Cicioni motioned to approve the request for 1 additional canopy sign on the North elevation. Samuels seconded. Voice vote: (unanimous). Motion carried. **APPROVED.**

Cicioni motioned to approve the request for 1 additional wall sign on the East elevation and 2 additional wall signs on the West elevation. Zvers seconded. Voice vote: (unanimous). Motion carried. **APPROVED.**

- 18-39:** A request by Chick-fil-a for a variance to allow a front setback reduction from 65' to 25' at 4893 Pauline Whitaker Parkway in the city's C-2 (Highway Commercial) zoning district.

Staff stated the applicant requests to requests to reduce the front yard setback from 65 feet to 25 feet to place a canopy of the drive thru. The canopy would extend closer to the right-of-way for Pauline Whitaker Parkway than any other structure in the area. The proposed canopy would be located in the middle of a utility easement which contains a sanitary sewer and gas line.

Scott Clark, Jo Ellen Clark and Darcie Fullington represented Chick-fil-A. Clark stated the canopy is for the benefit of their employees and to their customers. The canopy is very minimalistic and is aesthetically pleasing with other buildings on Pauline Whitaker. The canopy will protect team members from the exposure weather elements when taking orders in person and keep traffic on our property. Non-use of the speaker box will reduce noise pollution. The width of the canopy will not be over two lanes. It will be approximately 40 feet long and 25 feet wide and 9 feet tall. The canopies are equipped with fans and heaters. Chick-fil-A was under the impression this design was already approved before construction. The plan was for two canopies. One to place an order and one for delivery. The gas and electricity are already in place for the delivery canopy. Clark stated he understood the canopies would have to be removed in the event of any utility work.

Curry opened the Public Hearing. As no speakers were in favor or opposition of the variance, the Public Hearing was closed.

Samuels asked Clark if the all the utilities had been signed off. Clark stated Chick-fil-A verbally agreed to sign but are awaiting some signatures. Staff stated it would not be a utility reduction. It would be Chick-fil-A signing off to let them invade the utility easement, which is not typically done in the City of Rogers. Staff said you are either reducing the easement or you are not and moving the gas and utility lines as required.

Curry stated there was concern of the structure extending much further into the front setback. Curry explained the difference between the setbacks and utilities. Clark stated the drive-thru is on the outermost part of the property. Clark said customers will not have to cross the drive thru lane. Staff stated the menu boards are already in place and are not treated as a structure. Staff stated a structure cannot be built over the utilities without the easement being reduced and the same applies to setbacks.

Zvers motioned to deny the variance request for a front yard setback reduction from 65 feet to 25 feet as presented. Cicioni seconded. Voice vote: 3 Samuels-No. There was no majority vote of the Board.

**18-40:** A request by Valley Springs Rental, LLC for a variance to allow for a setback reduction and a minimum lot width reduction from 85' to 75' at 326 North 4th Street in the city's R-DP (Residential Duplex and Patio Homes) zoning district.

Staff stated the applicant requests a reduction in the minimum lot width from 85 feet to 75 feet in order to build a duplex. They are only 7' short of the lot width. The lot meets all other requirements for building a two-family residence and exceeds the minimum lot depth required by 60 feet. Additionally, this lot is only one parcel away from the Downtown NBT zoning district, which does not have any minimum lot size requirements for multi-units on one lot.

Mike and Sheila Reese and Don Spann represented the variance. Spann stated when the property was purchased it was zoned as RDP. The property is located on the corner of Cedar and 4<sup>th</sup> Street. There are major setbacks on each street. One duplex will face Cedar Street and one duplex will face 4<sup>th</sup> Street. He stated eventually the Reese's will live in one of the duplexes. The design will meet the context of the neighborhood with the appearance of a single family home. This property is one lot away from the CRDC Townhouse Zone. This allows row housing and with zero setbacks. The real estate doesn't justify apartment or a lower-end rental type of unit.

Curry opened the Public Hearing. As no speakers were in favor or opposition of the variance.

Randy Mott, who resides at 317 North 4<sup>th</sup> Street, addressed the Board in opposition of the variance. Mott stated the homes in the area are mostly period homes. He said the duplexes he has seen have not fit the neighborhood and have huge parking problems. He said he has not seen the plans for the duplex but believes the lot is too small for the structure.

Curry closed the Public Hearing, as there were no other speakers in favor or opposition of the variance.

Spann stated this is not for an encroachment on the setbacks. The structure will be constructed inside of the buildable area. The property setback to Cedar and 4th Street both have a buildable area of 40 feet from the curb and 55 feet to the center line of the

street. Cedar has large right-of-ways. Staff stated there are duplexes on 4<sup>th</sup> just a block north.

Zvers motioned to approve the variance request for a reduced minimum lot width from 85 feet to 75 feet. Samuels seconded. Voice vote: (unanimous). Motion carried.

**APPROVED.**

### **OLD BUSINESS**

**18-30:** A request by Rogers Water Utilities for a variance to allow a front, interior side, and exterior side setback reduction at 601 South 2nd Street in the city's I-1 (Light Industrial) zoning district. As no representatives for Rogers Water Utilities, this proposal was moved to the end of the agenda.

Staff stated Rogers Water Utilities' first request is to reduce the front setback from 50' to 7.5' and 20'. The second request is to reduce the interior side yard setback from 25' to 2'. The third request is to reduce the exterior side yard setback from 50' to 5' to build a metal canopy. The canopy will cover equipment for protection from the weather. These buildings are located on multiple parcels and have existed on the property this way for decades. The buildings were built in the setbacks. Rogers Water Utilities is wants to bring the long-term existing nonconformities into compliance with City code.

Brian Sartain and Brent Dobler, Rogers Water Utilities represented the variance. Sartain stated some of the buildings were operated by the Street Department. In the process of the Street Department vacating the buildings, other buildings were added. RWU now occupies these buildings. He said in order to correct some these issues, the right-of-way on Pecan Street was abandoned, which is now the location of RWU Field Operations parking lot.

Curry opened the Public Hearing. As no speakers were in favor or opposition of the variance, the Public Hearing was closed.

The Board had no questions or comments from the Board.

Cicioni motioned to approve the variance request for a front yard setback reduction around the existing encroachments as shown on the attached survey. Zvers seconded. Voice vote: (unanimous). Motion carried. **APPROVED.**

Cicioni motioned to approve the variance request for an interior side yard setback reduction around the existing encroachments as shown on the attached survey. Zvers seconded. Voice vote: (unanimous). **APPROVED.**

Cicioni motioned to approve the variance request for an exterior side yard setback reduction from 50' to 5' around the proposed encroachment as shown on the attached survey. Zvers seconded. Voice vote: (unanimous). **APPROVED.**

**Previous minutes:** June 14, 2018 and May 24, 2018.

Cicioni motioned to approve the minutes from June 14, 2018. Samuels seconded. Voice vote: (unanimous) Motion carried. **APPROVED.**

Cicioni motioned to approve the minutes from May 24, 2018. Samuels seconded. Voice vote: (unanimous) Motion carried. **APPROVED.**

**Secretary Appointment:**

Curry stated Juli Zimmerman has resigned. Curry made the nomination of Mandel Samuels. Cicioni seconded. Voice vote: (unanimous) Motion carried. **APPROVED.**

**Meeting adjourned at 6 pm.**

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Mandel Samuels, Board of Adjustment Secretary